

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSEPH GRANDE,

Plaintiff,

Civil Act. No: 1:11-cv-00777-SAS-JLC
ECF Case

v.

GRISTEDE'S FOODS, INC.; JOHN
CATSIMATIDIS,

Defendants.

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NOTICE OF MOTION TO DISMISS
BY DEFENDANT GRISTEDE'S FOODS, INC.

PLEASE TAKE NOTICE that, upon the memorandum of law filed herewith, any reply papers to Plaintiff's answering papers, and all pleadings and other papers filed with the Court, at a time and date designated by the Court, before The Honorable Shira A. Scheindlin, United States District Judge, at the United States Courthouse, 500 Pearl Street, Courtroom 15C, Defendant Gristede's Foods, Inc. ("Gristede's"), by its attorneys Sedgwick, Detert, Moran & Arnold LLP, will move this Court for an order dismissing Plaintiff Joseph Grande's Amended Complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure, awarding Gristede's its reasonable attorneys' fees and court costs and disbursements incurred in connection with Plaintiff's New York Labor Law § 740 claim, pursuant to New York Labor Law § 740(6), and granting Gristede's such other and further relief as this Court deems just and proper.

The Court should dismiss the Amended Complaint because:

- (1) On March 7, 2011, Plaintiff filed electronically with the Court a Voluntary Discontinuance of Count I of the Amended Complaint which stated that "Plaintiff hereby voluntarily discontinues and dismisses Count I of the Amended Complaint

(NY Labor Law, § 740) with prejudice.” Gristede’s consents to such dismissal with prejudice and respectfully requests that the Court So Order such dismissal with prejudice of Count I of the Amended Complaint.

- (2) The Court should dismiss the sole remaining count in the Amended Complaint, Count II, because it fails to state a claim upon which relief can be granted because the purportedly defamatory statement, when considered in context, was merely opinion and not a factual allegation of criminal conduct, and because, at most, the purportedly defamatory statement described only a nonactionable intent to commit a crime.

PLEASE TAKE FURTHER NOTICE that any opposing affidavits and answering memoranda, and reply affidavits and memoranda, must be served pursuant to a briefing schedule which the Court establishes in accordance with the Court’s Individual Rules and Procedures.

The undersigned certifies that he sent a pre-motion letter to Plaintiff’s counsel, and that Plaintiff’s counsel responded by telephone and e-mail.

Dated: New York, New York
April 8, 2011

Respectfully submitted,

SEDGWICK, DETERT, MORAN & ARNOLD LLP

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CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on April 8, 2011. Executed on April 8, 2011.

s/ Charles H. Kaplan
Charles H. Kaplan (CK-5801)